

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALWIN MANUFACTURING CO.,

Plaintiff,

v.

Case No. 08-C-451

GLOBAL PLASTICS, et al.,

Defendants.

ORDER

Plaintiff has filed a motion seeking a stay of these proceedings in light of the PTO's recent decision to reexamine the '898 patent at issue in this case. Defendants oppose the motion on the grounds that they are entitled to achieve timely resolution of this action. They further argue that the reexamination has no impact on the fully-briefed motion for summary judgment on the question of infringement.

The PTO's reexamination could clearly affect the viability of the patent-in-suit and affect this court's need to resolve certain claim construction issues, and for that reason I will order the *Markman* hearing removed from the calendar. But Defendants argue that there is little reason to delay consideration of the already pending motion for summary judgment. That motion, they argue, can be decided without a *Markman* hearing, and the issues involved would not be impacted by any decision the PTO reaches. Accordingly, I am satisfied that a stay of the entire action is not warranted. As the Defendants note, the pendency of an infringement lawsuit is something that needs to be disclosed to investors and creditors, and potential customers are wary about liability.

If it proves impossible to decide the pending motion on the record before me, further proceedings can be modified to adapt to that eventuality. But for now, I will not impose a stay on consideration of the pending motion for summary judgment. And if the pending motion does not dispose of the lawsuit, the parties can be heard at that point about their views on the best course of action.

The motion for a stay is **GRANTED** in part, as set forth above. The motion to seal the declaration of Matthew Friesen is **GRANTED**. The motion to file a reply brief is **GRANTED**.

SO ORDERED this 30th day of January, 2009.

s/ William C. Griesbach
William C. Griesbach
United States District Judge